

105TH CONGRESS  
2D SESSION

# H. R. 4308

To fully implement the Convention Against Torture and Other Cruel,  
Inhuman, or Degrading Treatment or Punishment.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1998

Mr. SMITH of New Jersey (for himself, Mr. LANTOS, Mrs. MALONEY of New York, Ms. NORTON, Mr. OBERSTAR, Mr. MINGE, Ms. WOOLSEY, Mrs. MORELLA, Mr. LEWIS of Georgia, Mr. DIAZ-BALART, Mr. SABO, Mr. RAMSTAD, Mr. BROWN of Ohio, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To fully implement the Convention Against Torture and  
Other Cruel, Inhuman, or Degrading Treatment or Pun-  
ishment.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Torture Victims Pro-  
5       tection Act of 1998”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) The American people abhor torture by any  
2           government or person. The existence of torture cre-  
3           ates a climate of fear and international insecurity  
4           that affects all people.

5           (2) Torture is the deliberate mental and phys-  
6           ical damage caused by governments to individuals to  
7           destroy individual personality and terrorize society.  
8           The effects of torture are long term. Those effects  
9           can last a lifetime for the survivors and affect future  
10          generations.

11          (3) By eliminating leadership of their opposi-  
12          tion and frightening the general public, repressive  
13          governments often use torture as a weapon against  
14          democracy.

15          (4) Torture survivors remain under physical  
16          and psychological threats, especially in communities  
17          where the perpetrators are not brought to justice. In  
18          many nations, even those who treat torture survivors  
19          are threatened with reprisals, including torture, for  
20          carrying out their ethical duty to provide care. Both  
21          the survivors of torture and their treatment provid-  
22          ers should be accorded protection from further re-  
23          pression.

24          (5) A significant number of refugees and  
25          asylees entering the United States have been victims

1 of torture. Those claiming asylum deserve prompt  
2 consideration of their applications for political asy-  
3 lum to minimize the insecurity and sense of danger.  
4 Many torture survivors now live in the United  
5 States. They should be provided with the rehabilita-  
6 tion services which would enable them to become  
7 productive members of our communities.

8 (6) The development of a treatment movement  
9 for torture survivors has created new opportunities  
10 for action by the United States and other nations to  
11 oppose state-sponsored and other acts of torture.

12 (7) There is a need for a comprehensive strat-  
13 egy to protect and support torture victims and their  
14 treatment providers, together with overall efforts to  
15 eliminate torture.

16 (8) By acting to heal the survivors of torture  
17 and protect their families, the United States can  
18 help to heal the effects of torture and prevent its use  
19 around the world.

20 (9) The United States became a party to the  
21 Convention Against Torture and Other Cruel, Inhu-  
22 man, or Degrading Treatment or Punishment on  
23 November 20, 1994, but has not enacted legislation  
24 to implement Article 3 of the Convention.

1 **SEC. 3. DEFINITIONS.**

2 (a) IN GENERAL.—Except as otherwise provided, the  
3 terms used in this Act have the meanings given those  
4 terms in section 101(a) of the Immigration and National-  
5 ity Act (8 U.S.C. 1101(a)).

6 (b) TORTURE.—The term “torture” has the meaning  
7 given the term in section 2340(1) of title 18, United  
8 States Code, and includes the use of rape and other forms  
9 of sexual violence by a person acting under the color of  
10 law upon another person under his custody or physical  
11 control.

12 **SEC. 4. PROHIBITION ON INVOLUNTARY RETURN OF PER-**  
13 **SONS FEARING SUBJECTION TO TORTURE.**

14 (a) PROHIBITION.—Notwithstanding any other provi-  
15 sion of law, the United States shall not expel, remove, ex-  
16 tradite, or otherwise return involuntarily an individual to  
17 a country if there is substantial evidence that a reasonable  
18 person in the circumstances of that individual would fear  
19 subjection to torture in that country.

20 (b) DEFINITION.—For purposes of this section, the  
21 term “to return involuntarily”, in the case of an individ-  
22 ual, means—

23 (1) to return the individual without the individ-  
24 ual’s consent, whether or not the return is induced  
25 by physical force and whether or not the person is  
26 physically present in the United States; or

1           (2) to take an action by which it is reasonably  
2       foreseeable that the individual will be returned,  
3       whether or not the return is induced by physical  
4       force and whether or not the person is physically  
5       present in the United States.

6 **SEC. 5. IMMIGRATION PROCEDURES FOR TORTURE VIC-**  
7 **TIMS.**

8       (a) COVERED ALIENS.—An alien described in this  
9       section is any alien who presents a claim of having been  
10      subjected to torture, or whom there is reason to believe  
11      has been subjected to torture.

12      (b) CONSIDERATION OF THE EFFECTS OF TOR-  
13      TURE.—In considering an application by an alien de-  
14      scribed in subsection (a) for refugee status under section  
15      207 of the Immigration and Nationality Act, asylum under  
16      section 208 of that Act, or withholding of removal under  
17      section 241(b)(3) of that Act, the appropriate officials  
18      shall take into account—

19           (1) the manner in which the effects of torture  
20      might affect the applicant's responses in the applica-  
21      tion and in the interview process or other immigra-  
22      tion proceedings, as the case may be;

23           (2) the difficulties torture victims often have in  
24      recounting their suffering under torture; and

1           (3) the fear victims have of returning to their  
2           country of nationality where, even if torture is no  
3           longer practiced or the incidence of torture is re-  
4           duced, their torturers may have gone unpunished  
5           and may remain in positions of authority.

6           (c) EXPEDITED PROCESSING OF REFUGEE ADMIS-  
7           SIONS.—For purposes of section 207(c) of the Immigra-  
8           tion and Nationality Act (8 U.S.C. 1157(c)), refugees who  
9           have been subjected to torture shall be considered to the  
10          refugees of special humanitarian concern to the United  
11          States and shall be accorded priority for resettlement at  
12          least as high as that accorded any other group of refugees.

13          (d) PROCESSING FOR ASYLUM AND WITHHOLDING  
14          OF REMOVAL.—Section 235(b)(1)(A) of the Immigration  
15          and Nationality Act (8 U.S.C. 1225(b)(1)(A)) is amended  
16          by adding at the end the following new clause:

17                               “(iv) SPECIAL PROCEDURES FOR  
18                               ALIENS WHO ARE THE VICTIMS OF TOR-  
19                               TURE.—

20                               “(I) EXPEDITED PROCEDURES.—  
21                               With the consent of the alien, an asy-  
22                               lum officer or immigration judge shall  
23                               expedite the scheduling of an asylum  
24                               interview or a removal proceeding for  
25                               any alien who presents a claim of hav-

1           ing been subjected to torture, unless  
2           the evidence indicates that a delay in  
3           making a determination regarding the  
4           granting of asylum under section 208  
5           of the Immigration and Nationality  
6           Act or the withholding of removal  
7           under section 241(b)(3) of that Act  
8           with respect to the alien would not ag-  
9           gravate the physical or psychological  
10          effects of torture upon the alien.

11                   “(II) DELAY OF PROCEEDINGS.—  
12           With the consent of the alien, an asy-  
13           lum officer or immigration judge shall  
14           postpone an asylum interview or a re-  
15           moval proceeding for any alien who  
16           presents a claim of having been sub-  
17           jected to torture, if the evidence indi-  
18           cates that, as a result of the alien’s  
19           mental or physical symptoms resulting  
20           from torture, including the alien’s in-  
21           ability to recall or relate the events of  
22           the torture, the alien will require more  
23           time to recover or be treated before  
24           being required to testify.”.

1 (c) PAROLE IN LIEU OF DETENTION.—The finding  
 2 that an alien is a person described in subsection (a) shall  
 3 be a strong presumptive basis for a grant of parole, under  
 4 section 212(d)(5) of the Immigration and Nationality Act  
 5 (8 U.S.C. 1182(d)(5)), in lieu of detention.

6 (f) EXEMPTION FROM EXPEDITED REMOVAL.—Sec-  
 7 tion 235(b)(1)(F) of the Immigration and Nationality Act  
 8 (8 U.S.C. 1225(b)(1)(F)) is amended by inserting before  
 9 the period at the end the following: “, or to an alien de-  
 10 scribed in section 5(a) of the Torture Victims Relief Act”.

11 (g) SENSE OF CONGRESS.—It is the sense of Con-  
 12 gress that the Attorney General should allocate resources  
 13 sufficient to maintain in the Resource Information Center  
 14 of the Immigration and Naturalization Service current in-  
 15 formation relating to the use of torture in foreign coun-  
 16 tries.

17 **SEC. 6. SPECIALIZED TRAINING FOR CONSULAR, IMMIGRA-**  
 18 **TION, AND ASYLUM PERSONNEL.**

19 (a) IN GENERAL.—The Attorney General shall pro-  
 20 vide training for immigration inspectors and examiners,  
 21 immigration officers, asylum officers, immigration judges,  
 22 and all other relevant officials of the Department of Jus-  
 23 tice, and the Secretary of State shall provide training for  
 24 consular officers, with respect to—

25 (1) the identification of torture;



1           (2) the identification of the surrounding cir-  
2           cumstances in which torture is most often practiced;

3           (3) the long-term effects of torture upon a vic-  
4           tim;

5           (4) the identification of the physical, cognitive,  
6           and emotional effects of torture, and the manner in  
7           which these effects can affect the interview or hear-  
8           ing process; and

9           (5) the manner of interviewing victims of tor-  
10          ture so as not to retraumatize them, eliciting the  
11          necessary information to document the torture expe-  
12          rience, and understanding the difficulties victims  
13          often have in recounting their torture experience.

14       (b) GENDER-RELATED CONSIDERATIONS.—In con-  
15       ducting training under subsection (a) (4) or (5), gender-  
16       specific training shall be provided on the subject on inter-  
17       acting with women and men who are victims of torture  
18       by rape or any other form of sexual violence.

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